HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 17, 2013
83rd Legislature, Number 76
The House convenes at 10 a.m.
Part Two

Thirty-eight bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar and a Congratulatory and Memorial Calendar today.

Bill Callegari
Chairman
83(R) – 76

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Friday, May 17, 2013
83rd Legislature, Number 76
Part Two

SUBJECT: Restructuring the Cancer Prevention and Research Institute of Texas

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: For — Sandra Castillo, Alamo Breast Cancer Foundation and the Young Survival Coalition; Carol Dallred, Texas Nurses Associaton; Dale Eastman, Alamo Breast Cancer Foundation; Paul Lammers, Mirna Therapeutics Inc.; Maria Linares, The Rose; Cathie Sublett, The Rose; Gary Thompson, Leukemia and Lymphoma Society; Terry Wilson-Gray, Bridge Breast Network; (*Registered, but did not testify*: Troy Alexander, Texas Medical Association; Nora Belcher, Texas e-Health Alliance; Carol Cannon; Kevin Cooper, Texas Nurse Practitioners; Teresa Devine, Blue Cross and Blue Shield of Texas; Anna Dragsbaek, The Immunization Partnership; James Gray, American Cancer Society Cancer Action Network; Shirley LaVergne; David Lofye, Livestrong Foundation; Matt Moore, Children's Medical Center of Dallas; Jerry Worden, Alamo Breast Cancer Foundation)

Against — None

On — Kristen Doyle and Wayne Roberts, Cancer Prevention and Research Institute of Texas

BACKGROUND: Tex. Const., Art. III, sec. 67 authorizes the issuance of bonds to fund the Cancer Prevention and Research Institute of Texas. Health and Safety Code, ch. 102 establishes CPRIT, defines the institution's duties, structure, and funding, and creates conflict-of-interest rules. The institution is led by an executive director who recommends certain grant applications for approval. The oversight committee may disregard the recommendation

with a two-thirds vote. A person has a substantial financial interest in an entity if the person is an employee, member, director, or officer of an entity, or if the person owns or controls more than 5 percent in the entity.

DIGEST:

CSSB 149 would make substantial changes to the structure, duties, and funding of the Cancer Prevention and Research Institute of Texas (CPRIT). It would also establish a code of conduct and additional conflict-of-interest rules.

Structure. The bill would modify the structure of institute, establish salary restrictions, and change the composition of the oversight committee.

Officers. The executive director position would be replaced by a chief executive officer (CEO) hired by the oversight committee. The CEO would need to have a demonstrated ability to lead and develop partnerships and coalitions. The CEO would hire chief scientific, operating, product development, and prevention officers who would report directly to the CEO and help further the institute's mission.

Salary. The institute could not supplement an employee's salary – including the CEO's salary – with gifts or grants given to the institute, but the chief scientific officer's salary could be supplemented from legislative appropriations or bond proceeds. The CEO's salary could only come from legislative appropriations.

Oversight committee. The terms of current members of the oversight committee would end immediately, and the governor, lieutenant governor and the speaker of the house of representatives would have to appoint new members to committee as soon as possible after the effective date.

The comptroller and the attorney general (or their designees) would be removed from the oversight committee, and no person with an interest in an entity receiving institute money could serve on the committee. The nine-member oversight committee would be made up of three members each appointed by the governor, lieutenant governor, and the speaker of the House of Representatives. Each must each appoint at least one person with extensive oncology or public health experience, and any oversight committee members appointed by those officials would serve at the pleasure of the appointing office.

The oversight committee would hire the CEO, annually set priorities for each grant program, and consider those priorities when awarding grants. The committee would also need to elect a presiding officer and an assistant presiding officer, and the bill would specify the term limits for these positions. The oversight committee would need to have responsibilities that are distinct from those of the CEO and institute employees. Members of the oversight committee would have to give the CEO verified financial statements.

The oversight committee would have to establish the research and prevention programs committees, and the CEO would have to appoint to the committee qualified patient advocates. The institute, oversight committee, and CEO would be responsible for developing rules and requirements for members of the research and prevention programs committees, as specified by the bill.

State auditor. This bill would not limit the authority of the state auditor.

Duties. The bill would modify grant award procedures, establish additional grant contract provisions, and require a compliance program. Generally, the institute would have to:

- continuously monitor contracts and agreements to ensure that each grant recipient complied with the terms and conditions of the contract;
- ensure that all grant proposals complied with established rules before they were submitted to the oversight committee for approval;
- establish procedures to document that the institute, employees, and committee members were complying with laws and establish rules regarding the peer review process and conflicts of interest;
- establish the Cancer Prevention and Research Institute of Texas Program Integration Committee composed of five officers, including the CEO as the presiding officer; and
- employ a chief compliance officer to help establish a compliance program, monitor and report to the oversight committee, confirm compliance of grant proposals, and ensure compliance of the program integration committee by attending and observing meetings.

Grants. The institute would have to maintain complete records of grant

applications and grant recipients, including the scores given to each applicant, financial and progress reports of each recipient, and any reviews done by the institute. Any electronic grant management system would be subject to a periodic audit, and the institute would have to fix any identified weaknesses in the system.

Grant award procedures. The research and prevention programs committee would have to score grant applications, make recommendations to the program integration committee, and explain why an application was recommended. The program integration committee would, by majority vote, decide whether to submit the applications to the oversight committee and document why they were recommended. The program integration committee would have to give priority to proposals that expedited product development (instead of commercialization) and addressed the goals of the Texas Cancer Plan. Grants would then need to be approved by a two-thirds vote of oversight committee, and the committee would have to document in the meeting minutes the reasons for not approving a recommendation, if applicable.

The institute's chief compliance officer would have to compare each grant application to a list of nonprofit donors that provide support to the institution. The institute could not award a grant to one of these donors or to an applicant that had given a gift or grant to the institute. The CEO would have to submit a written affidavit for each grant application, with all of the relevant information specified in the bill. Committee members and the CEO could not discuss the application until certain requirements were met.

Grant contract terms. Before awarding a grant, the oversight committee would have to establish a written contract with the recipient. The committee could terminate the contract and require repayment (of both principal and interest) if the recipient failed to meet the terms and conditions. The institute would have to adopt a policy on advance payments.

The contract would have to require matching funds equal to half the grant award and include certain information about the matching funds, as specified in the bill. The oversight committee would have to certify that the recipient had the necessary matching funds and would dedicate those funds to cancer research. The institute would have to adopt rules about how a grant recipient could fulfill the matching funds obligation. The bill

would specify minimum requirements for those rules, establish different ways to provide the matching funds, and describe the various funds that would and would not qualify for matching fund certification. The failure to provide matching fund certification could serve as grounds for termination of the contract. The bill would also establish procedural requirements for documentation and annual review of matching funds.

Grant evaluation. The bill would establish additional procedures for grant evaluation. It would require the institute to create reporting requirements and implement a report tracking system, among other things. The chief compliance officer would have to monitor compliance with the reporting requirements and notify the general counsel and oversight committee of any noncompliance. This would allow the institute to suspend or terminate a contract, but would not limit other available contract remedies.

Compliance program. The institute, under the direction of the chief compliance officer, would have to establish a compliance program to assess and ensure committee members and employees were in compliance with laws, rules, and policies. This would include compliance with ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

The institute could establish procedures, such as a telephone hotline, to allow private access to the compliance program, preserving the confidentiality and maintaining the anonymity of a person making a report or participating in an investigation. The bill would specify that certain information, such as identifying information, would be confidential and not subject to public disclosure, unless the individual consented. The bill would also specify to whom confidential information could be disclosed without consent, such as to a law enforcement agency, among others.

Conflict-of-interest rules. The institute's oversight committee would have to adopt conflict-of-interest rules to govern the oversight, program integration, research and prevention programs committees, as well as institute employees.

Recusal. Anyone governed by the conflict-of-interest rules would need to recuse themselves if they were closely related to, or had a professional or financial interest in, a grant applicant or recipient. An institute employee could not have an office in a facility owned by a grant applicant or recipient. The bill would define the situations in which an individual had a

professional or financial interest that would require recusal, and the oversight committee could adopt additional conflict-of-interest rules.

Disclosure. Anyone governed by the institute's conflict-of-interest rules would need to provide written notice to certain officers about a potential conflict with a grant applicant and recuse themselves from the review of the application and could not have access to application information.

There would be additional disclosure requirements for committee members. Members of the oversight, program integration, and research and prevention programs' committees would also need to recuse themselves from any discussions, deliberations, and votes on the applications. Members of the oversight and program integration committees would have to disclose the conflict in an open meeting of the oversight committee. Members of the research and prevention programs would have to disclose a professional or financial conflict and recuse themselves for any matter before their committee.

Reported conflicts. Any committee member or employee who reported a potential conflict, impropriety, or self-dealing of another individual would be in compliance with the bill's rules, but members and employees would be also subject to other applicable laws and rules. A violation of the conflict-of-interest rules would warrant removal from the grant review process.

Waiver. The oversight committee would have to adopt rules regarding the waiver of conflict-of-interest rules in exceptional circumstances, and any committee member or employee could request a waiver. The waiver rules would have to meet specific requirements detailed in the bill, including reporting, documentation, and approval requirements.

Unreported conflicts. If a committee member or employee became aware of an unreported conflict of interest, the person would have to immediately notify the CEO. The CEO would have to notify the presiding officer of the oversight committee and the general counsel to determine the nature and extent of the conflict. A grant applicant could request an investigation into a potentially unreported conflict by giving the CEO a written request with all the relevant facts within 30 days of the final funding recommendations for the applicable grant cycle.

If the institute's general counsel was notified about a potentially

unreported conflict, they would have to investigate and provide the CEO and presiding officer of the oversight committee with an opinion on the matter. The opinion would have to include a statement of the facts, a determination about whether a conflict, impropriety, or self-dealing existed, and, if so, the appropriate course of action. If the matter involved the presiding officer of the oversight committee, the general counsel would report to the next ranking member not involved in the matter. The bill would specify procedures by which the CEO or presiding officer of the oversight committee would order recusal based on the general counsel's opinion.

The CEO or presiding officer would have to make a final determination about the potentially unreported conflict, impropriety, or self-dealing. The determination would have to include information about actions taken to address the issue, including the reconsideration of an application or the referral to another committee for review. The bill would establish additional procedures, such as notice requirements, about these determinations. An unreported conflict by an individual could not be used to invalidate a grant application, unless specifically decided by a CEO or presiding officer.

Code of conduct. The oversight committee would have to adopt a code of conduct applicable to the members of the oversight and program integration committees and institute employees. The bill would specify the minimum requirements for the code of conduct. It would have to prohibit accepting or soliciting gifts, disclosing confidential information, and serving on the board of directors of grant recipients, among other things. A member of the research and prevention programs committees could not serve on the board of directors of a similar organization affiliated with a grant recipient.

Reports. By January 31 of each year, the institute would have to submit to certain government authorities and post online a report of its activities, grant awards, grants in progress, research accomplishments, and future program directions. Among other things, the report would need to include a statement about the compliance program's activities, any proposed legislation or recommendations, and any conflict-of-interest waivers granted in the preceding year.

Funding. The bill would modify the institute's funding mechanisms and establish that certain records were public information.

Cancer prevention and research fund. The cancer prevention and research fund would not include patent, royalty, and licenses fees and other incomes received from grant contracts. The legislatively appropriated funds could not include proceeds from the issuance of bonds authorized by the Texas Constitution, but the fund could include debt service on bonds.

Sinking fund. The bill would establish the cancer prevention and research interest and fund as a general revenue dedicated account. It would consist of patent, royalty, and licenses fees, other income received from grant contracts and earned interest on investments of fund money. The fund could only be used to pay for debt service on bonds authorized by the Texas Constitution, as determined the Legislature's General Appropriations Act.

Open records. The records of a nonprofit organization created to support the institute would be public information. The institute would have to post online records related to any gift, grant, or other consideration given to the institute, committee member, or employee. The post would need to include the donor name, gift amount, and date of donation.

Effective dates. The oversight committee would have to establish a compliance program and adopt rules to implement the bill as soon as possible. The bill would only apply to a grant application submitted on or after the effective date. By December 1, 2013, the oversight committee would have to employ a CEO and chief compliance officer. By January 1, 2014, the committee members and employees would have to comply with the bill's qualification requirements.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 149 would enable CPRIT to ethically and effectively continue its mission by restructuring the institute's leadership and peer review process, requiring matching funds from grant recipients, establishing a compliance program, and strengthening conflict-of-interest prohibitions.

In 2007, Texas voters approved a constitutional amendment to establish the Cancer Prevention and Research Institute of Texas (CPRIT) and authorize the issuance of $3 billion in bonds to fund cancer research and

prevention programs and services. In 2012, allegations arose about potentially improper grants, conflicts of interest, and favoritism, prompting criminal investigations and legislative inquiries. A recent report from the state auditor noted that CPRIT's inadequate transparency and accountability of grant management processes reduced its ability to properly award and effectively monitor its grants. The report revealed that three grants — totaling $56 million — were approved without proper peer review. One of the recipients, a start-up company, was given $11 million without adequate reviews of their business or scientific plans.

Despite the controversy, the institute serves a worthy mission. Due in part to the creation of CPRIT, Texas provides more cancer research funds than any other state. These funds have enabled health care providers and researchers to conduct groundbreaking studies, recruit and train new physicians and scientists, and diagnose and treat more cancer patients. One organization estimates that a CPRIT grant allowed them to increase mammogram screenings by 400 percent.

CPRIT is enabling important cancer research and helping increase access to services, and the bill would allow the institute to continue to fulfill its mission in a transparent, responsible manner. It would ensure that grants are awarded to established companies well prepared to conduct cancer research or offer services by requiring grant recipients to provide substantial matching funds. It would also establish stricter peer review procedures for grant applications and more thorough reporting requirements for grant recipients.

In addition, the bill would implement a system of checks and balances designed to prevent bias, favoritism, and self-dealing. The bill would strengthen the oversight committee, add a code of conduct, and establish stricter conflict-of-interest rules which would prevent and deter impropriety by committee members and employees. By establishing new requirements for committee members and employees, as well as grant applicants and recipients, the bill would ensure that grants were awarded in an ethical, accountable manner.

By changing the funding mechanisms, the bill would also push the institute to become self-sufficient, relieving any future burden on Texas taxpayers.

OPPONENTS SAY:

CSSB 149 should not extend the life of CPRIT. Although the bill could prevent some impropriety and self-dealing, it would not entirely stop abuse of the system. The institute has in place existing conflict-of-interest prohibitions and peer review processes that did not prevent improper grants from being awarded to a variety of inappropriate recipients. As the recent fiasco has shown, offering large grants of money will always be tainted by politics. Texas should dismantle the institute to prevent further abuse of public funds.

OTHER OPPONENTS SAY:

CSSB 149 could go further to prevent the institute from becoming embroiled in controversy. CPRIT should sever ties with any supporting nonprofit organizations to prevent additional doubts about transparency and accountability.

NOTES:

Compared with the Senate engrossed version, the committee substitute requires a code of conduct. It specifies ways that a grant recipient can meet the matching fund requirement. It also modifies the chief compliance officer's duties, the institute's reporting requirements, and the composition of and qualifications for the oversight committee.

SUBJECT: Subjecting nonprofit organizations that support CPRIT to open records

COMMITTEE: Transparency in State Agency Operations, Select — favorable, without amendment

VOTE: 6 ayes — Alvarado, Flynn, Larson, Martinez Fischer, Perry, Price

0 nays

2 absent — N. Gonzalez, Johnson

SENATE VOTE: On final passage, April 16 — 29-0

WITNESSES: For — (*Registered, but did not testify:* Donnis Baggett, Texas Press Association; Ashley Chadwick, Freedom of Information Foundation of Texas)

Against — None

BACKGROUND: Business Organizations Code, ch. 22, subch. H, mandates annual financial reporting for nonprofit organizations and requires that nonprofit financial records be available for public inspection.

Government Code, ch. 552, known as the Public Information Act, governs public access to information that is collected or maintained in connection with the transaction of official business by a governmental body.

DIGEST: SB 895 would make records of a nonprofit organization established to provide support to the Cancer Prevention Research Institute of Texas (CPRIT) subject to the Public Information Act.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: SB 895 would be a simple measure to increase the transparency of operations for a nonprofit organization, such as the CPRIT Foundation — now known as the Texas Cancer Coalition — that formed to provide

financial assistance to CPRIT. The bill would address concerns that have arisen that communications from the former CPRIT Foundation were shielded from disclosure as public information.

While some laws currently on the books subject nonprofit financial records to disclosure, these requirements do not extend to communications and other records that shed light on organizational operations. Since the affairs of any organization formed to support CPRIT could have a bearing on public matters and taxpayer dollars, they should be subject to the same public information requirements that govern state agencies.

OPPONENTS SAY:

SB 895 could hinder the operations of a nonprofit organization founded to support CPRIT, such as the Texas Cancer Coalition. Fulfilling public information requests under ch. 552 is often a laborious and time-consuming enterprise. Any measures that increase administration costs would tie up resources available for fundraising to support cancer research.

SUBJECT: Replacing a mental health pilot project with the Texas System of Care

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

1 nay — Laubenberg

1 absent — Coleman

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: (*On House companion bill, HB 3684*)
For — Josette Saxton, Texans Care for Children; (*Registered, but did not testify:* Greg Hansch, National Alliance on Mental Illness Texas; Marilyn Hartman, National Alliance on Mental Illness; Harry Holmes, Harris County Healthcare Alliance; Cynthia Humphrey, Association of Substance Abuse Programs; Kathryn Lewis, Disability Rights Texas; Katharine Ligon, Center for Public Policy Priorities, Janna Lilly, TCASE – Texas Council of Administrators of Special Education; Katie Malaspina, Texans Care for Children; Diana Martinez, TexProtects; Sandra Martinez, Methodist Healthcare Ministries of South Texas; Michelle Romero, Texas Medical Association; John Stuart, National Association of Social Workers Texas Chapter; Gyl Switzer, Mental Health America of Texas)

Against — None

On — (*Registered, but did not testify:* Terry Beattie, HHSC; Angela Hobbs-Lopez, DSHS; Elizabeth Kromrei, DFPS)

BACKGROUND: SB 1234 by Nelson, enacted by the 76th Legislature, created the Texas Integrated Funding Initiative (TIFI) consortium pilot project to develop and expand local mental health systems of care in communities for minors who are receiving, or are at risk of needing, residential mental health services. The Health and Human Services Commission and the consortium were required to develop model guidelines, establish plans to expand the project in up to six communities, and create a central fund for expansion

communities. The commission had to adopt rules for expansion proposals, award grants, and develop an outcome evaluation system. It also had to collaborate with the consortium to select expansion communities, provide technical assistance, and develop a local evaluation system.

DIGEST:

CSSB 421 would replace the TIFI consortium pilot project with the Texas System of Care.

Duties. The Health and Human Services Commission would have to form a consortium that had responsibility and oversight over a state system of care. The consortium would develop local mental health systems of care for minors receiving residential mental health services or inpatient mental health hospitalization, or who were at risk of being removed from their homes and being placed in a more restrictive environment. These environments would include inpatient mental health hospitals, residential treatment facilities, or a placement within Department of Family and Protective Services (DFPS) or the juvenile justice system.

The commission and the consortium would be required to:

- maintain a comprehensive plan to deliver mental health services and supports to minors and their families who were using a system of care;
- implement strategies to expand the use of system-of-care practices throughout the state;
- identify appropriate local, state, and federal funding sources to finance infrastructure and mental health services to support system-of-care efforts; and
- develop a state and local outcome evaluation system.

The Department of State Health Services (DSHS) and the commission would be required to jointly monitor the progress of communities that implemented local systems of care, as well as any cost avoidance and net savings that resulted from implementation. The commission could provide technical assistance to a community that implemented a local system of care.

Reports. By November 1 immediately preceding each regular legislative session, the consortium would submit to the Legislature and the Council on Children and Families an evaluation of outcomes, as well as recommendations to strengthen local support through state policies and

practices. The recommendations would have to identify:

- methods to increase access to services and the capacity of communities to implement local systems of care;
- how to use cross-system performance and outcome data to help individuals and systems make informed decisions; and
- strategies to maximize public and private funding at the local, state, and federal levels.

Members. The consortium would include the DSHS, the DFPS, the commission's Medicaid program, the Texas Education Agency, the Texas Juvenile Justice Department, and the Texas Correctional Office on Offenders with Medical or Mental Impairments. Other members would include a young individual with a serious emotional disturbance who had received mental health services and a family member of a similar individual. The Children's Policy Council could coordinate with the consortium to find appropriate individuals.

Repealed sections. The bill would repeal provisions related to the TIFI consortium pilot project. Specifically, it would remove requirements that the commission evaluate request-for-expansion proposals, award grants, and develop an outcome evaluation system. It also would repeal provisions requiring the commission to collaborate with the consortium to select expansion communities, provide technical assistance, and develop a local evaluation system.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 421 would reestablish and expand an effective children's mental health pilot project. Many different state and local agencies provide services to children with serious mental health conditions, but there is little planning or collaboration among these agencies. In 1999, the TIFI consortium was created to address this problem. The initiative was successful at providing selected communities with the training and resources to develop coordinated systems of care, but program funding was eliminated in 2011. Using federal funds, the program continued for an additional year and developed the Texas System of Care strategic plan.

This bill would codify the strategic plan and create the Texas System of Care Consortium, enabling oversight of local systems of care and providing communities with important resources. A statewide strategic

plan would improve long-term outcomes and save the state money by preventing expensive hospitalizations, incarcerations, and foster-care placements.

OPPONENTS SAY:

CSSB 421would increase the size of the state government. Mental health services and supports are best developed and administered on the local level. This bill would represent an unnecessary expansion of government.

NOTES:

CSSB 421 differs from the Senate-engrossed version in that the committee substitute would not require the commission to evaluate request-for-expansion proposals.

SUBJECT: Authorizing county and city prostitution prevention programs

COMMITTEE: Criminal Jurisprudence — community substitute recommended

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, March 21 — 31- 0, on Local and Uncontested Calendar

WITNESSES: *(On companion bill, HB 3377:)*
For — Peggy Hoffman, Dallas County Criminal Court No. 9; Marc Levin, Texas Public Policy Foundation; Jorge Renaud, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Jeff Patterson, Texas Catholic Conference of Bishops)

Against — (*Registered, but did not testify:* Annie Mahoney, Texas Conservative Coalition)

On — John Dahill, Texas Conference of Urban Counties

BACKGROUND: Penal Code, sec. 43.02 makes prostitution a crime. It is an offense to knowingly:

- offer to engage, agree to engage, or engage in sex for a fee; and
- solicit another in a public place to engage in sex for hire.

Offenses are class B misdemeanors (up to 180 days in jail and/or a maximum fine of $2,000). Second and third offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of $4,000). Fourth and subsequent offenses are state-jail felonies (180 days to two years in a state jail and an optional fine of up to $10,000).

DIGEST: CSSB 484 would authorize counties and cities to establish prostitution prevention programs for persons charged with prostitution for offering or

agreeing to engage in sex for a fee.

Counties with populations of more than 200,000 in which no city already had a prostitution prevention program would be required to establish one, if they received sufficient state or federal funding specifically for it. Counties required to establish programs would have to apply for federal and state funds to pay for the programs. Prostitution prevention programs would be added to the list of specialty courts eligible for certain grant funding from the governor's criminal justice division.

Counties that were required to establish a program but did not or did not maintain a program would be ineligible for state funding for a community supervision and corrections (probation) department. Two or more counties or two or more cities could establish a regional program.

Prosecutors would have to agree to a defendant's participation in a program. Courts would have to allow eligible participant to choose whether to participate in the program or proceed through the criminal justice system.

If defendants successfully completed a prostitution prevention program, and certain conditions were met, the court would have to enter an order of nondisclosure for the participant's records relating to the prostitution arrest as if the defendant had received a discharge and dismissal after a deferred adjudication. Before entering the nondisclosure order, the court would have to notify the prosecutor in the case and have hearing to consider whether the participant was entitled to disclosure, including considering whether disclosure was in the best interests of justice.

Program requirements. The programs would have to:

- ensure that participants were provided legal counsel before volunteering for the program and while in it;
- allow participants to withdraw any time before a trial had been initiated;
- give participants information, counseling, and services related to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and
- give participants instructions on the prevention of prostitution.

Programs could have employees or volunteers who were health care

professionals, psychologists, social workers, counselors, former prostitutes, family members of persons arrested for soliciting prostitution, representatives of communities affected by prostitution or trafficking, and employees of non-governmental organizations specializing in advocacy or laws relating to sex or human trafficking or in providing services to victims of those crimes.

Judges and magistrates would be able to suspend community service requirements that were part of a participant's probation. Upon successful completion of program, judges and magistrates could excuse participants from those requirements.

The bill lists seven characteristics that would be considered essential characteristics of the programs:

- the integration of services in the processing of cases in the judicial system;
- a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and reduce demand for the commercial sex trade and trafficking of persons and to protect program participants' due process rights;
- early identification and prompt placement of participants;
- access to information, counseling, and services;
- a coordinated strategy to govern program responses to participant compliance;
- monitoring and evaluation of the program;
- continuing education to promote program planning, implementation, and operations; and
- partnerships with public agencies and community organizations.

Programs would have to establish and publish local procedures to promote participation in the program.

Program oversight. The lieutenant governor and the speaker of the House of Representatives could assign oversight of the programs to legislative committees. A legislative committee could ask the state auditor to perform management, operations, financial, or accounting audits of the programs. Legislative committees could ask counties that do not establish programs due to a lack of funding to give the committee information about the county's federal and state funding.

Programs would have to notify the criminal justice division of the governor's office when they begin and would have to give the division information about its performance when requested.

Program fees. Programs could collect a non-refundable court fee from participants, up to $1,000. A portion of the program fee would have to be designated as a counseling and services fee to cover the costs of those items. Another portion of the fee, equal to 10 percent of the counseling and services fee, would be designated as a victim services fee, and another portion, equal to 5 percent of the counseling and services fee, would be designated as a law enforcement training fee. The victims' services fee would go to a current grant program for certain victims of trafficking. The law enforcement training fee would go to the county or city establishing the program

Fees would have to be based on participants' ability to pay.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 484 is needed to more effectively address the issue of prostitution. By taking a statewide approach to the issue, SB 484 could enhance public safety by reducing prostitution offenses in a cost-effective manner.

The punitive approach of dealing with prostitutes through the standard criminal justice system often leads to prostitutes cycling in and out of local jails and state facilities without being rehabilitated and without being deterred from committing additional offenses. This results in high costs for police, the courts, and the state and can leave prostitutes with felony criminal records. These records make it difficult for prostitutes to reintegrate into society by finding legitimate work or suitable, safe housing. This can start the cycle of prostitution again.

SB 484 would address this by authorizing cities and counties to establish local prostitution diversion programs. These programs could model themselves after existing successful programs and specialty courts that offer treatment, counseling, and education, rather than incarceration. Many prostitutes suffer from problems such as substance abuse, mental illness, or past trauma, and offering diversion programs would be more effective and more compassionate than locking them up. These programs can offer

safe, permanent exits from prostitution, benefitting the prostitute and the public.

While the bill would establish authorization for the programs, it would mandate them only for larger counties and only if sufficient state or federal funding were available. If there was not sufficient state or federal funding specifically for the program, counties would not be required to establish them. By creating a mandate dependent on funding, the bill would ensure that if resources were available, the state's largest counties would move forward to address this issue.

Safeguards in the bill would ensure that the diversion programs would be used in appropriate circumstances. Prosecutors would have to agree for a person to be allowed to participate, and prostitutes would have a choice about entering the program. Because of multiple and complex rehabilitation needs of some prostitutes, the bill would not limit participants to one time in the program or limit it to first-time offenders. In some cases, it could take more than one time through a program for rehabilitation to be successful.

The bill would encourage participation in the programs by offering participants an order of nondisclosure, but only for the criminal record relating to the prostitution offense for which the person entered the program. Before an order of nondisclosure could be entered, courts would have to have a hearing that included notice to the prosecutor and consideration of whether disclosure was in the best interests of justice.

The fee established by the bill would help fund the counseling and treatment in the programs and provide funds for certain crime victims and law enforcement. The fee would have to be based on a participant's ability to pay, and in many cases, could be less than a participant would pay in court fines and costs.

The bill would establish guidelines and parameters for the programs to ensure that they were set up in the most effective way. These guidelines are modeled after ones that apply to the first-offender prostitution solicitation prevention program authorized in 2011 to address the demand side of prostitution. Program performance would be monitored through legislative oversight and the criminal justice division of the governor's office.

CSSB 484 could save the state money as prostitutes were diverted from state jails, which can cost from about $15,000 per year to house an offender. Community programs can be substantially less, with one estimate at $4,300 per year. This savings could be used for treatment and rehabilitation. While the fiscal note lists one estimate for the bill of $2.9 million needed from the criminal justice planning account, it also says that there likely would be smaller programs requiring fewer grant funds than the estimate used as the basis for the note. In addition, the fiscal note says an indeterminate amount of revenue would be generated by the bill's fee.

OPPONENTS SAY:

The state should not mandate the establishment of local prostitution prevention programs, even when the mandate is predicated on funding. These decisions should be made on the local level. CSSB 484 could cost the state grant funds from the criminal justice planning account estimated at $2.9 million per fiscal year, according to the fiscal note.

OTHER OPPONENTS SAY:

CSSB 484 should clearly be limited to first-time offenders and make those who complete the program once ineligible for another diversion. This would ensure the program was focused on those who deserved and were committed to change and was not abused by those wanting only a way to get out of jail.

SUBJECT: Regulation of certain local anesthesia services

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, April 18 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Jaime Capelo, Texas Society of Anesthesiologists; Dan Finch, Texas Medical Association; Marisa Finley, Scott & White Center for Healthcare Policy; Lisa Hollier, American Congress of OBGYNs; Jay Propes, Texas Ophthalmological Association; Rachael Reed, Texas Ophthalmological Association; Crystal Wright, Texas Medical Association/Texas Society of Anesthesiologists)

Against — None

On — (*Registered, but did not testify*: Mari Robinson, Texas Medical Board and Texas Physician Assistant Board)

BACKGROUND: Occupations Code, ch. 162, subch. C requires the Texas Medical Board to establish minimum standards for anesthesia services provided in an outpatient setting. Sec. 162.103 lists conditions under which the rules established under Subch. C do not apply, including an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used.

DIGEST: SB 978 would allow the Texas Medical Board to establish minimum standards for anesthesia services provided in an outpatient setting in which local anesthesia, peripheral nerve blocks, or both were used if the total dosage amount exceeded 50 percent of the recommended maximum safe dosage per outpatient visit.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 978 would enhance patient safety by giving the Texas Medical Board the authority to establish minimum standards and best practices for the use of local anesthesia in an outpatient setting. When the law that exempted local anesthesia from the Texas Medical Board rules was passed, local anesthesia provided in an outpatient setting was only used for minor procedures. However, local anesthesia is now being used for more significant procedures, such as cosmetic surgery and liposuction. These more significant procedures can use more dangerous levels of anesthesia and are dangerous if not administered correctly. Allowing the Texas Medical Board to establish rules when local anesthesia is used in higher dosages in outpatient settings would ensure sensible safety standards and weed out bad actors, helping protect patient safety.

OPPONENTS SAY:

While the bill may be well intended, it would increase the regulatory burden on physicians. New regulations for outpatient anesthesia services could increase the cost of services and discourage certain providers from performing them.

SUBJECT: Verifying insurance status before receiving DSHS services

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2129:*)
For — (*Registered, but did not testify:* Susan Milam, National Association of Social Workers/Texas Chapter)

Against — None

On — Rachel Samsel, Department of State Health Services; (*Registered, but did not testify:* Ayanna Clark, Legislative Budget Board)

BACKGROUND: In general, the Department of State Health Services (DSHS) seeks to provide health services to those ineligible for another benefit that would pay for part or all of the department's services.

As part of the federal Patient Protection and Affordable Care Act (ACA), beginning January 1, 2014, individuals will be able to receive insurance coverage through a health benefit exchange, an online marketplace of government-regulated health insurance plans. Those with incomes between 100 percent and 400 percent of the federal poverty level will be eligible for sliding scale premium subsidies and reductions in cost sharing.

The Legislative Budget Board's 2013 *Government Effectiveness and Efficiency Report* notes that the health benefit exchange is projected to impact 18 DSHS programs affecting close to 44,000 clients, and recommends DSHS maximize the use of private health insurance for clients receiving care provided by the agency.

DIGEST: SB 1057 would prohibit DSHS from providing health services to an

individual unless the applicant for services, or the applicant's legally authorized representative, either confirmed they did not have access to private health insurance coverage for the services or they provided their insurance information and authorized DSHS to submit to their insurer a claim for reimbursement.

The bill would apply to DSHS health services that the department anticipated would be impacted by a health benefit exchange, including:

- community primary health care;
- women and children's services;
- children with special health care needs;
- epilepsy, hemophilia, kidney health, and HIV and sexually transmitted disease programs;
- immunization programs;
- Rio Grande State Center mental health services;
- community mental health services;
- NorthSTAR Behavioral Health Program;
- community and state mental hospitals; and
- any other health program or service designated by DSHS.

The bill would require that as soon as practicable after the bill's effective date, DSHS develop a form for an applicant to verify their lack of private insurance or provide their insurance information. DSHS would be allowed to waive this requirement and provide services during a crisis or emergency.

SB 1057 would require DSHS provide informational materials regarding health insurance coverage and subsidies available in the health benefit exchange to an individual or the individual's legally authorized representative who applied to receive the above DSHS health services and had an income above 100 percent of the federal poverty level. DSHS could develop these informational materials.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. As soon as possible after the bill's effective date, the Health and Human Services Commission would apply for any necessary waiver to implement the bill, and, if needed, could delay implementation until it was granted.

SUBJECT: Department of Agriculture economic development programs

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Y. Davis

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — None

Against — (*Registered, but did not testify:* Dustin Matocha, Texans for Fiscal Responsibility)

On — Bryan Daniel, Texas Department of Agriculture

DIGEST: SB 1214 would make various changes to the Texas Department of Agriculture's economic development programs. These include establishing the Texas Economic Development Fund as a separate account in the treasury, allowing TDA to accept gifts, allowing TDA to establish the assistance available to certified retirement communities by rule, expanding the interest rate reduction program to include businesses in rural areas, and allowing TDA to request rather than require a letter from a commercial loan officer for approval of a loan application. The bill also would make non-substantive updates to statutory references.

Establishing the Texas Economic Development Fund. The bill would establish the Texas Economic Development Fund as a separate fund in the state treasury to receive the interest and revenue associated with the program from federal and other sources. Money in the fund would be appropriated only to TDA for economic development programs.

Economic development opportunities. SB 1214 would allow TDA to

accept gifts or appropriations to administer economic development programs.

Certified retirement community program. The bill would allow TDA to establish the assistance available to certified retirement communities by rule rather than having it prescribed in statute.

The bill also would strike "application" from the language regarding the fee TDA collects from these communities, removing the restriction that the fee only be collected upon submittal of an application to be a certified retirement community.

Texas Agriculture Finance Authority interest rate reduction program. SB 1214 would expand the interest rate reduction program to include businesses in rural areas.

Texas Agriculture Finance Authority agricultural loan guarantee program application requirements. The bill would change one of the requirements of an application for a loan guarantee so that commercial lenders no longer had to be requiring a loan guarantee, but could be requesting one.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1214 would make improvements to the Department of Agriculture's economic development programs, which contribute directly to a strong and diverse Texas economy. The bill would enhance TDA's ability to support producers, businesses, and communities statewide and help TDA with the administration of a federal economic development program for small businesses. It also would clean up statutes pertaining to the Texas Agriculture Finance Authority.

OPPONENTS SAY:

SB 1214 would change the language regarding the Certified Retirement Community Program's application fee. The bill would strike the word "application," turning it into a fee that TDA could charge at any time, with no limit set on how often. This could give TDA more authority to charge more fees to retirement communities. Although this program is voluntary, the fee structure should be specified by statute, not left up to the TDA.

NOTES:

The Legislative Budget Board's fiscal note indicates the bill would result in no significant fiscal implication to the state.

The bill would create the Texas Economic Development Fund in the state treasury for the deposit of $46.4 million in federal funds from the State Small Business Credit Initiative Act of 2010, as well as investment returns and interest earnings generated by the program. These federal funds are currently deposited to the general revenue fund. The LBB projects that because these receipts are federal funds, this would result in a non-certification loss to the general revenue fund and have no significant fiscal impact.

The committee substitute differs from the Senate engrossed version by removing the provision that would exempt the Texas Certified Retirement Community Program General Revenue Account from the uses of dedicated revenue, including use for budget certification.

SUBJECT: Traffic regulation in a conservation and reclamation district

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Phillips, Martinez, Burkett, Fletcher, Harper-Brown, Lavender, Pickett

1 nays — Y. Davis

3 absent — Guerra, McClendon, Riddle

SENATE VOTE: On final passage, April 18 — 31-0 on Local and Uncontested Calendar

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Michael Vasquez, Texas Conference of Urban Counties

Against — None

BACKGROUND: Texas Constitution, Art. 3, Sec. 52 and Art. 16, Sec. 59 govern conservation and reclamation districts.

On October 5, 2010, the Attorney General's office issued an opinion (GA-0809) that restricted a county's ability to regulate traffic in a conservation and reclamation district.

DIGEST: SB 1411 would allow a county to enter into an interlocal contract with the board of a conservation and reclamation district to apply the county's traffic regulations to a public road located wholly or partly within the county that was owned, operated and maintained by a conservation and reclamation district, if the commissioners court found that it was in the county's interest to regulate traffic there.

The commissioners court could also regulate traffic control devices in restricted traffic zones on:

- a county road or on real property owned by the county under the jurisdiction of the commissioners court; and
- property abutting a public road subject to traffic regulation by a commissioners court, if the property was owned by a conservation

and reclamation district or was a public right-of-way.

The public roads regulated under the bill would be considered county roads for purposes of applying traffic regulation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1411 would fill a gap in statute to allow a commissioners court of a county to enter into an agreement to regulate traffic on public roads within the county that were also in conservation and reclamation districts. The office of the Attorney General issued an opinion in 2010 that brought into question the ability of county commissioners to regulate roads in unincorporated areas. SB 1411 would make clear that a commissioners court could enter into an agreement with the board of a conservation and reclamation district to regulate traffic in the district.

The bill would improve public safety by authorizing a county sheriff's office to regulate traffic on public roads in these districts as if they were any other public road. Current law prohibits counties with public roads in conservation and reclamation districts from taking measures that would help keep residents safe, including regulating traffic around schools and installing stop signs in these areas.

OPPONENTS SAY:

SB 1411 would not specify who would enforce the traffic laws and what kind of training they would have. It is also unclear that the traffic regulators would be sheriff's officers with appropriate training.

NOTES:

A companion bill, HB 2330 by Gooden, was passed by the House on May 7 and referred to the Senate Transportation Committee on May 9.

HB 2330 differs from SB 1411 in that the House bill would apply only to Kaufman County. The HRO analysis of HB 2330 appears in the May 4 *Daily Floor Report*, Number 66, Part Two.

SUBJECT: Allowing certain out-of-state labs to operate as in-state providers

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, May 1 — 31 - 0

WITNESSES: (*On House companion bill, HB 2490:*)
For — Chris Hughes, Labcorp; (*Registered, but did not testify:* Haley Cornyn, Clinical Pathology Laboratories; Kris Kwolek, Labcorp; Christina Thompson, Texas Association for Clinical Laboratory)

Against — None

On — Laurie VanHoose, Texas Health and Human Services Commission

BACKGROUND: Texas Administrative Code, sec. 352.17, effective December 31, 2012, considers an applicant or re-enrolling provider as out-of-state if:

- the physical address where services are or will be rendered is located outside of Texas and within the United States;
- the physical address where the services or products originate or will originate is located outside of Texas and within the United States when providing services, products, equipment or supplies to a state Medicaid recipient; or
- the physical address where services are or will be rendered is located within Texas but patient records, billing records or both are outside the state and the applicant cannot produce copies of these records from their Texas location where services are rendered.

An out-of-state applicant or re-enrolling provider is ineligible to participate in Medicaid unless they meet certain criteria, such as medical

necessity, and are approved by HHSC or its designee. An out-of-state provider does not meet the criteria for Medicaid eligibility merely on the basis of having established business relationships with one or more providers that participate in Medicaid.

DIGEST:

SB 1401 would allow an out-of-state diagnostic laboratory to participate as an in-state provider under any program administered by a health and human services agency or the Texas Health and Human Services Commission that involved diagnostic laboratory services if:

- the laboratory or its parent, subsidiary, or affiliate operated a diagnostic laboratory in Texas;
- the laboratory or its parent, subsidiary, or affiliate individually or collectively employed at least 1,000 people in Texas;
- the laboratory was otherwise qualified to provide services under the program; and
- the laboratory was not prohibited from participating as a provider under any benefits programs administered by a health and human services agency or the commission for fraud, waste, or abuse.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1401 would strike a balance between encouraging state economic development, increasing efficiency for Texas-based diagnostic laboratories, and ensuring high quality and low costs for services under the Medicaid system.

The bill would clarify that the HHSC rules encouraging the use of in-state labs did not prohibit the use of out-of-state labs with a Texas-based parent, subsidiary, or affiliate. The bill would encourage in-state economic development by requiring labs to employ at least 1,000 people in Texas and be based in Texas before a connected out-of-state lab could be considered an in-state provider. Under the bill, eligible providers could operate more efficiently because they could avoid having to re-enroll in the system each year.

A small number of highly specialized tests, such as prenatal, oncology, or genetic testing for Medicaid patients need to be performed outside the state because these tests are either not performed at Texas facilities or

Texas facilities do not perform them for Medicaid patients. Requiring a specialized lab in each state would be cost prohibitive for Texas-based laboratories in terms of capital investment and because specialized labs process a much lower volume of lab work than standard clinical labs. The bill would allow lab tests to be done in the locations where economies of scale would ensure the fastest, most accurate, and most cost-effective service for state Medicaid patients.

Under the bill, there would be no change to HHSC rules regarding out-of-state providers and no additional cost to the state. The bill would not affect out-of-state providers not specifically defined in the bill and would not affect the enrollment or operation of labs already in-state.

OPPONENTS SAY:

SB 1401 is not necessary because there is no shortage of specialty diagnostic laboratory providers operating in-state and could negatively affect wholly in-state businesses. The HHSC rules are meant to encourage the use of in-state providers. Encouraging Texas-based specialty laboratories operating out-of-state to move their operations in-state would be best for increasing economic development in-state, instead of allowing certain out-of-state providers to be considered as in-state providers.

SUBJECT: Pilot program to allow certain counties to offer licensing services

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

SENATE VOTE: On final passage, April 16 — 29-0

WITNESSES: (*On House companion bill, HB 827:*)
For — Jim Allison, County Judges and Commissioners Association of Texas; Ronnie Keister; John Lee Norman, Garza County; (*Registered, but did not testify:* John Thompson, Polk County; Michael Vasquez, Texas Conference of Urban Counties)

Against — (*Registered, but did not testify:* Claire Wilson James)

On — David Palmer and Michael Terry; Texas Department of Public Safety (*Registered, but did not testify:* Tom Benavides and Jim Kilchenstein, Texas Department of Public Safety)

BACKGROUND: According to Attorney General opinion GA-0917, the Department of Public Safety (DPS) lacks statutory authority to contract with a county to allow county employees to perform DPS duties relating to the issuance of driver's licenses and personal identification certificates. Similarly, counties lack the statutory authorization to participate in such a program.

DIGEST: SB 1729 would allow DPS to establish a pilot program under which the department could enter into an agreement with a county commissioner court to allow county employees to provide services relating to the issuance of renewal and duplicate driver's licenses and election and personal identification certificates in county offices, including:

- taking photographs;
- administering vision tests;
- updating a driver's license, ID card, or election ID certificate;

- collecting information on organ donation;
- collecting and remitting fees to DPS; and
- performing other related functions.

The pilot program could include a maximum of eight counties, including a maximum of three with populations of 50,000 or fewer, a maximum of three with populations of 50,001 to 1 million, and a maximum of two with populations greater than 1 million.

DPS would be required to provide to a participating county all equipment necessary to perform these services, although the department could not train the county to administer a driver's license examination. A participating county could collect an additional fee up to $5 for each transaction relating to a driver's license or ID card. A county office in a participating county could decline or consent to provide these services after submitting written consent to the commissioner's court.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1729 would increase government efficiency and enhance convenience for citizens by allowing counties in the pilot program to enter into an agreement with DPS to renew driver's licenses and identification certificates. Currently, up to 80 counties do not have DPS offices, and their residents must travel long distances to renew their licenses and certificates. This problem was exacerbated when DPS recently closed offices in some counties and did not have the authority to simply allow counties to provide these services.

Allowing certain counties to provide these services would benefit consumers and increase government efficiency. Consumers could see shorter lines at DPS offices because the bill would remove some of the burden from DPS.

Because SB 1729 would be permissive, DPS and the county would only enter into an agreement if both sides consented. This would give the department and the county the flexibility to consider the costs and benefits of the agreement, without forcing either side to unwillingly spend resources.

OPPONENTS SAY:

Although the pilot program would limit the number of counties that could participate, DPS would still have to commit resources to provide the necessary equipment and training for the counties in the program. Additionally, aside from requiring participation by counties of different sizes, the bill would not specify how counties would be selected to participate in the pilot program.

NOTES:

HB 2008 by Taylor, a similar bill, was reported favorably on April 26 by the House Homeland Security and Public Safety Committee.

HB 827 by K. King, a similar bill, was passed by the House 139-6-1 and was referred to the Senate Transportation Committee on May 7.

The HRO analysis of HB 827 appears in the April 30 *Daily Floor Report*, Number 62.

SUBJECT: Allowing colleges to use criminal records when making housing decisions

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — Branch, Patrick, Clardy, Darby, Howard, Martinez, Raney

2 nays — Alonzo, Murphy

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: (*On House companion bill, HB 895)*
For — Dennis Crowsom, Harold Nolte and Annn Weir, Blinn College; Edward Williams, Kilgore College

Against — None

On — (*Registered, but did not testify*: Pete McGraw, Hogg Foundation for Mental Health)

DIGEST: SB 146 would allow institutions of higher education to obtain from the Department of Public Safety criminal history record information on students and prospective students who applied for on-campus housing. The information would only be used for the purpose of evaluating the housing applications of current or prospective students and only used by the institution's chief of police or housing office.

Criminal history record information received by the institution could not be released or disclosed to anyone except by court order or with the consent of the person who was the subject of the criminal history record information. The criminal history information would be destroyed as soon as practicable.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply to a person who applied to reside in campus housing for an academic period beginning on or after that date.

SUPPORTERS SAY:

SB 146 would give Texas public universities the ability to screen applicants for on-campus housing based on their criminal histories.

There are too many instances where students have hidden serious crimes, such as burglary or even sexual offenses, from college housing offices and then ended up posing threats to other students. Criminal actions on campus can spoil the college experience and learning environment for others. The information would not be used for admissions purposes; it simply would allow institutions to consider it before granting housing on-campus.

The bill would not direct housing officials to exclude any particular student or class of student. Instead, by giving universities access to criminal background data, the bill would grant housing offices a fuller picture of applicants. This would allow them to better weigh each individual application.

OPPONENTS SAY:

The bill is overbroad. It would allow universities and colleges to exclude people who were arrested for or accused of crimes from living in campus housing. Exclusion from on-campus housing, which is traditionally subsidized, can be extremely costly to students and potential students. Exclusion should be reserved only for those people actually convicted of criminal activity.

The mentally ill could be excluded unfairly from campus housing because they often are exposed to law enforcement and may have criminal records, even though most have never posed a threat to others.

SUBJECT: Alternative dispute resolution for students with disabilities

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Aycock, Allen, J. Davis, Deshotel, Farney, Huberty, Ratliff, J. Rodriguez, Villarreal

0 nays

2 absent — Dutton, K. King

SENATE VOTE: On final passage, April 18 — 30-0

WITNESSES: (*On companion bill, HB 2057*)
For — Rona Statman, The ARC of Texas; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Chris Borreca; Michelle Crow, The ARC of Wichita County; Stacy Ford; Dwight Harris, Texas AFT; Janna Lilly, Texas Council of Administrators of Special Education; Casey McCreary, Texas Association of School Administrators; Sean McGrath, Texas Advocates; Jeff Miller, Disability Rights Texas and The Disability Policy Consortium; Julie Shields, Texas Association of School Boards)

Against — None

On — (*Registered, but did not testify:* David Anderson and Gene Lenz, Texas Education Agency)

BACKGROUND: Under state and federal law, a school district is required to establish an admission, review, and dismissal (ARD) committee to develop an individualized education program (IEP) for each child served by the district's special education program.

DIGEST: SB 542 would require the Texas Education Agency (TEA) to provide information to parents regarding IEP facilitation as an alternative dispute resolution method to resolve disputes between a school district and a parent of a student with a disability. The bill would require TEA to develop rules to administer the state individualized education program facilitation project, which would provide independent IEP facilitators.

The rules would include:

- a definition of independent IEP facilitation;
- forms and procedures for requesting, conducting, and evaluating IEP facilitation;
- training, knowledge, experience, and performance requirements for independent facilitators; and
- conditions required for TEA to provide facilitation at no cost to the parties.

The bill would allow the commissioner of education to use federal funds to implement the project. It also would authorize a school district that chose to use facilitation to determine whether to use independent contractors, district employees, or other qualified individuals as facilitators.

Districts that offered the method would be required to inform parents in a written or electronic format about the procedures for requesting the facilitation and that it would be provided at no cost. Facilitation would be provided only if the participants agreed to it, and could not be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing under federal law. A school district would be able to use facilitation as the district's preferred method of conducting initial and annual ARD meetings.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply beginning with the 2014-15 school year.

SUPPORTERS SAY:

SB 542 would formalize a tool to encourage agreement when there was a dispute over the IEP for a student served by a district's special education services. It would allow disputes to be resolved at a level closest to the child in a manner that provided timely results for students and cost savings for districts and families.

Many districts currently use some form of IEP facilitation, but there is no consistent statewide information provided to parents about the method. The bill would develop statewide criteria for the method to ensure its availability and to allow the state to measure its effectiveness and quality.

The formal complaint resolution processes provided by federal law can become adversarial and cost school districts and parents money, time, and trust. Some school personnel believe that some parent advocates unnecessarily escalate disputes in order to seek fees from school districts, while many parents believe that the administrative hearing and complaint processes are biased toward school districts, which leaves going to court as their only option.

The National Center for Appropriate Dispute Resolution in Special Education recommends that districts provide a full array of alternative dispute options to help ensure positive working relationships between districts and parents and appropriate education plans for students. Facilitation takes place as part of the ARD committee meeting to provide opportunities to resolve conflicts.

OPPONENTS SAY:

SB 542 would create a state-level project with associated costs at a time when many school districts already are successfully using facilitation and other alternative dispute resolution methods to avoid formal complaints. TEA would need an estimated $623,413 in federal funds in fiscal 2015 to implement the project, according to the Legislative Budget Board (LBB). Similar costs would be incurred in subsequent years.

NOTES:

According to the fiscal note, an estimated 660 parties that are in a dispute would use facilitation under the bill, which is about twice the number of requested mediations under current law. At a cost of $750 per facilitation, the LBB estimates that facilitation would cost $495,000 in fiscal 2015 and would increase by 1.8 percent per year. TEA would experience other costs related to hiring an employee to administer the project and an online system to track facilitations, raising the total federal-funds cost to about $623,000 in fiscal 2014-15. TEA has identified adequate federal funding to cover the costs, according to the LBB.

On April 23, the House Public Education Committee recommended a committee substitute for the companion bill, HB 2057 by Allen.

SUBJECT: Limiting ticketing of students on school campuses and buses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth

0 nays

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion, HB 3057:*)
For — (*Registered, but did not testify:* Jennifer Carreon, Texas Criminal Justice Coalition; Kathryn Freeman, Texas Appleseed; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Andrea Marsh, Texas Fair Defense Project; Lauren Rose, Texans Care for Children; Matt Simpson, ACLU of Texas; Steven Tays, Bexar County Criminal District Attorney's Office)

Against — (*Registered, but did not testify:* Lon Craft, TMPA; James Jones San Antonio Police Department)

DIGEST: SB 1114 would prohibit law enforcement officers from issuing citations or filing complaints for conduct by children younger than 12 years old that allegedly occurred on school property or on a vehicle owned or operated by a county or independent school district.

The bill would require law enforcement officers who issued citations or filed complaints accusing children 12 years or older of offenses to submit to the court an offense report, a statement by a witness, and a statement by a victim. This would apply to offenses that were alleged to have occurred on school property or on a vehicle owned or operated by a county or school district. Prosecutors could not proceed in a trial unless the law enforcement officer met these requirements.

The Education Code offenses of disruption of class and disruption of transportation would no longer apply to primary and secondary grade students enrolled in the school where the offense occurred.

The bill would include in the definition of "public place" under the Penal Code's offense for disorderly conduct a public school campus and the school grounds.

Children accused of any class C misdemeanor (maximum fine of $500), other than a traffic offense, could be referred to a first-offender program before a complaint was filed with a criminal court. The cases of children who successfully completed first-offender programs for class C misdemeanors could not be referred to the court if certain conditions in current law were met.

SB 1114 would prohibit arrest warrants for persons with class C misdemeanors under the Education Code for an offense committed when the person was younger than 17 years old.

School district peace officers no longer would be authorized to perform administrative duties for a school district but would be limited to their current authority to perform law enforcement duties. The authority of these officers to take children into custody, which currently must be done in accordance with the Family Code, also could be done in accordance with Code of Criminal Procedure, art. 45.0058, which governs children taken into custody.

Chiefs of school district police departments no longer would be authorized to report to a superintendent's designee, only to the superintendent.

The bill would require student codes of conduct to specify the circumstances under which a student could be removed from a vehicle owned or operated by a district. A code of conduct also would have to include appropriate options for managing students at each grade level on these vehicles.

Courts would be required to dismiss complaints or referrals for truancy made by a school district if they were not accompanied by currently required statements about whether truancy prevention measures were applied in the case and whether the student was eligible for special education services.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date. The bill's provisions prohibiting arrest

warrants for class C misdemeanors issued under the Education Code for an offense committed when a person was younger than 17 years old would apply to offenses before, on, or after the bill's effective date.

SUPPORTERS SAY:

SB 1114 would help address the problem of law enforcement officers issuing tickets to young students for common or immature misbehaviors that would be best handled by other means while leaving in place the necessary tools to address more serious criminal behavior. Ticketing practices vary across districts, so a uniform, statewide policy is needed.

By prohibiting students younger than 12 years old from receiving class C misdemeanor citations for behavior on school property or in school vehicles, the bill would curb the practice of ticketing children at school for noncriminal activities, such as chewing gum, pushing a peer, sleeping in class, or throwing a paper airplane. Issuing tickets for these types of offenses is counterproductive because it often does not improve behavior and pulls these young children into the criminal justice system. Legal remedies are not the way to address the noncriminal misbehavior of children younger than 12.

The bill also would exempt students in primary and secondary school from disruption of class and disruption of transportation offenses because these offenses should be used to address behavior by persons who are not students at that school.

Schools and law enforcement officers would continue to have the full range of other tools to handle these situations. Officers could focus on criminal behavior, and schools could handle discipline issues. Peace officers would retain authority to handle more serious, criminal offenses on school property and by students. For serious offenses, such as fighting in school, SB 1114 would empower school peace officers by adding schools to the public places in which a person could be guilty of disorderly conduct under the Penal Code.

SB 1114 would require an officer who issued any citation on school property to a child 12 years old or older to submit to the court the offense report, a statement by any witness, and a statement by any victim before the prosecutor could proceed with a trial. This would provide transparency and would serve to verify that criminal behavior, rather than just childish behavior, was the cause for the citation. This requirement would not burden officers because it would be consistent with what officers have to

do when issuing citations outside of schools.

Prohibiting arrest warrants for persons given citations before they turned 17 years old would ensure that youths were not arrested years later for something they did as a child that violated the Education Code. This would not eliminate whatever obligation they might have to a court; it only would prohibit arrest.

Removing authority for law enforcement officers to handle administrative duties would help free officers from duties such as dress code violations. This would allow them to focus on more troublesome behavior.

By allowing students issued class C misdemeanors for school offenses to attend first-offender programs, the bill would increase the options for handling these cases. Many jurisdictions and courts have adopted these programs for children involved in the juvenile justice system. Through training and education in several different areas, these programs can improve a child's behavior and decision-making skills, and they should be available to youths receiving tickets.

OPPONENTS SAY:

By limiting who could receive tickets and what they could be issued for, SB 1114 would reduce the flexibility available to school districts to handle students who continuously misbehave. Sometimes, when other methods of addressing this behavior do not work, tickets can be an effective tool. The flexibility in current law should not be reduced.

SUBJECT: Administering, authorizing psychoactive medications to DADS clients

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 17 — 31-0

WITNESSES: *(On House companion bill, HB 1739:)*
For — Beth Mitchell, Disability Rights Texas; Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify:* Katherine Barillas, One Voice Texas; Chase Bearden, Coalition of Texans with Disabilities; Leah Gonzalez, The National Association of Social Workers Texas Chapter; Harry Holmes, One Voice Texas; Ginger Mayeaux, The Arc of Texas; Gyl Switzer, Mental Health America of Texas)

Against — None

On — Nina Jo Muse, DSHS; Scott Schalchlin, DADS

BACKGROUND: The Texas Department of Aging and Disability Services (DADS) administers long-term services and supports for individuals with intellectual and physical disabilities. Health and Safety Code, sec. 591.003 defines "client" as a person receiving mental retardation services from the department or a community center.

Health and Safety Code, ch. 592 governs the rights of individuals with mental retardation (now commonly referred to as intellectual or developmental disabilities). Sec. 592.038 states that each client has the right to not receive unnecessary or excessive medication and prohibits medication from being used for certain purposes. Sec. 592.054(b) requires directors and superintendents of state facilities to gain consent for all surgical procedures.

DIGEST:

SB 34 would establish provisions regarding the right to refuse psychoactive medications, create informed consent procedures, and establish due process medication hearings for clients receiving residential care services from DADS.

Right to refuse. SB 34 would give clients receiving voluntary or involuntary residential care services the right to refuse psychoactive medications. For clients committed to a residential care facility, the residential care facility could seek court authorization for the medication, despite the refusal.

If a client refused a psychoactive medication, the bill would prohibit the administration of the medication unless:

- the client was having a medication-related emergency;
- an authorized consenter had given permission;
- a court authorized the medication after a hearing; or
- the medication was authorized by an order under the Code of Criminal Procedure.

Consent. The bill would establish requirements for administering psychoactive medications to clients receiving residential care services. It would require a superintendent or director to gain consent for the administration of all psychoactive medications unless the client fell under one of the exceptions.

Consent for a psychoactive medication would need to be given voluntarily and without coercive or undue influence by the client or his or her authorized consenter. The treating physician (or designee) would have to provide specific information about the condition, medication, potential beneficial effects, side effects, risks, and possible alternatives to the medication.

The consent would have to be recorded on a form provided by the residential care facility. It could also be recorded with a statement by the physician (or designee) documenting that consent was given by an authorized individual and the circumstances under which consent was obtained. If the treating physician designated another person to document the consent, the physician would be required to meet with the client or authorized consenter within two business days to review the information

and answer any questions.

If a client refused or attempted to refuse a psychoactive medication — either verbally or by other means — it would have to be documented in the client's clinical record.

Administering psychoactive medications. When prescribing a psychoactive medication, the bill would require a physician to prescribe an effective medication with the fewest side effects or the least potential for adverse side effects and to administer the smallest possible dosage for the client's condition.

If a psychoactive medication was administered without consent because a client was having a medication-related emergency, the physician would have to document the necessity with specific medical or behavioral terms and that the physician evaluated, but rejected, less intrusive forms of treatment. The treatment with psychoactive medication would need to be provided in the manner least restrictive of the client's personal liberty.

Application for a court order. A physician could seek court authorization to administer a psychoactive medication if the physician believed the client lacked the capacity to make a medication decision, determined the medication was the proper course of treatment, and the client had been committed to a residential care facility (or a commitment application had been filed). The application for court-ordered medication would need to explain why the physician believed the client lacked the capacity to make a medication decision, the physician's diagnosis, and specific information about the medications, among other things.

Although an application for court-ordered medication would have to be filed separately from a commitment application, the hearings could be held on the same day. The bill also would establish when a hearing would have to be held, when an extension could be granted, and when a case could be transferred to a different county.

A client for whom a medication application had been filed would be entitled to notice about the hearing, representation by an attorney, independent review by an expert, and notification about the court's determination of the client's capacity and best interest.

Court order. To order a psychoactive medication, the court would need

clear and convincing evidence that the client lacked the capacity to make a medication decision and the medication was in the client's best interest. After a hearing, the client and attorney would be entitled to written notification of the court's determinations, reasons for the decision, and a statement of the evidence. When determining if the medication was in the client's best interest, the court would need to consider a number of factors, including the client's expressed preferences, religious beliefs, the medication's risks and benefits, and any less intrusive treatments.

A court order also could be issued for client awaiting a criminal trial, if the client was committed to a residential treatment facility within six months of the medication hearing. If the client was criminally committed to a residential treatment facility or was confined in a correctional facility, a court could authorize a medication if, by clear and convincing evidence, the court determined the medication was in the client's best interest and the client was dangerous to the client or to others. When determining if a client presented a danger, the court would need to assess the client's current mental state and whether the client had made serious threats of physical harm.

A medication hearing would be conducted by a probate judge, but the hearing could be transferred to a magistrate or associate judge with psychoactive medication training. The bill would establish procedures for appealing a magistrate or associate judge's decision and transferring a case to a judge also licensed as an attorney.

Effect of a court order. A court order would allow the administration of a psychoactive medication to a client, even if the client refused. Conversely, a client with a court order would not be able to consent to a psychoactive medication, but the order would not be a determination of mental incompetency or limit a client's rights. A court order would permit dosage changes, stopping or restarting a medication, and substitutions within the same medication class, as determined by DADS. If a client was confined to a correctional facility, the order would authorize any appropriate pre - transfer mental health treatment, but would not authorize retaining the client for competency restoration treatment.

A party could petition for reauthorization or modification (change of medication class) of a court order. A client also could appeal an order. All orders would remain in effect until a court made a final decision on the petition or appeal. An order would expire a year from the date it was

issued, unless it was issued for a client awaiting a criminal trial. In that case, it would be reviewed every six months and expire when there was a final decision in the case.

Additional hearings. If a client found incompetent to stand trial did not meet the criteria for court-ordered psychoactive medication under this bill, SB 34 would allow a state attorney to file a motion to compel medication under the Code of Criminal Procedure.

This bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 34 would amend current law by defining how clients receiving residential care services, including residents of state-supported living centers (SSLCs), could be given psychoactive medications. There are currently no statutes outlining the requirements for administering these powerful medications to this population. The bill would help residential care facilities and protect clients by ensuring informed consent and due process, improving the continuity of care, and promoting uniformity within current law.

Right to refuse and informed consent. SB 34 would protect clients receiving residential care services by ensuring that clients and authorized consenters were adequately informed about their medical care and codifying the right to refuse psychoactive medications.

Due process. The U.S. Supreme Court has ruled that a person has a constitutional right to refuse psychoactive medications. This refusal can be overridden only if the person is confined (or committed) and there is a due process hearing. By formalizing the right to refuse psychoactive medications and establishing procedures by which a facility could seek a court order, SB 34 would establish important due process procedures for clients committed to residential care facilities.

Continuity of care. Due to an injunction, an SSLC cannot administer a psychoactive medication if a client refuses, even if the physician believes the treatment is in the client's best interest. As a result, an SSLC must transfer a client to a state hospital, which has procedures for due process medication hearings. These transfers are stressful and disruptive for clients, while placing additional burdens on state hospitals. By establishing due process hearing procedures for residential care facilities, this bill would eliminate the need for these transfers. This would improve

the quality and continuity of care for clients, while streamlining the medication process for both SSLCs and state hospitals.

Uniformity. The bill would promote uniformity by mirroring requirements in the Mental Health Code and the Nursing Home Act. Similar procedures for residents of state hospitals and nursing homes have existed for many years. This bill would allow clients receiving residential care services to enjoy the same due process rights and protections as other populations.

OPPONENTS SAY:

By increasing informed consent requirements, SB 34 could place additional administrative burdens on doctors. Similarly, new due process procedures could increase probate court caseloads. It is unclear how many individuals would be affected by this bill, so it is difficult to determine the extent of the impact on doctors and courts.

SUBJECT: Maximum allowable cost lists in Medicaid managed care

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, April 25 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1137:*)
For — Chuck Hopson; (*Registered, but did not testify:* Paul Bollinger, HEB; Duane Galligher, Texas Independent Pharmacies Association; Leah Gonzalez, National Association of Social Workers Texas Chapter; Michael Harrold, Express Scripts; John Heal, Texas TrueCare Pharmacies; David Marwitz, Texas Pharmacy Association; Karen Reagan, Walgreen Company; Miguel Rodriguez, Texas Pharmacy Business Council; David Root, Prime Therapeutics; Brad Shields, Texas Federation of Drug Stores, Texas Society of Hospital Pharmacists; Gyl Switzer, Mental Health America of Texas; Morris Wilkes, United Supermarkets; Michael Wright, Texas Pharmacy Business Council)

Against — None

On — David Gonzales, Texas Association of Health Plans; (*Registered, but did not testify:* Andy Vasquez, Health and Human Services Commission)

BACKGROUND: Medicaid managed care organizations (MCOs) use pharmacy benefit managers (PBMs) to administer claims and reimbursements for participating pharmacies. PBMs reimburse pharmacies for certain prescription drugs according to a proprietary maximum allowable cost (MAC) formula.

DIGEST: SB 1106 would establish several conditions necessary for a PBM or

Medicaid MCO to place a drug on a MAC list.

The PBM or MCO would be required to use drugs rated as "A" or "B" in the most recent version of the U.S. Food and Drug Administration's *Approved Drug Products* (the "Orange Book"), or have a similar rating by a nationally recognized reference. The drug also would have to be generally available for pharmacies to purchase from national or regional wholesalers.

The bill would require the PBM or MCO to provide the sources used to determine the MAC pricing for the MAC list specific to that pharmacy at the time a contract with a network pharmacy was entered into or renewed.

The PBM or MCO would be required to review and update the MAC price information at least once every seven days. When formulating the MAC price for a drug, the PBM or MCO would use only the price of the drug and its therapeutic equivalents in the most recent edition of the Orange Book.

SB 1106 would require the PBM or MCO establish a process for eliminating products from the MAC list or modifying MAC prices in a timely manner to remain consistent with pricing changes and drug availability.

The bill would make the PBM or MCO provide a procedure for a network pharmacy to challenge a listed MAC price and respond to any challenge within 15 days. If the challenge was successful, the PBM or MCO would adjust the drug price and apply it to all similarly situated pharmacies. If it was unsuccessful, the PBM or MCO would provide the reason for the denial. The procedure would also require the PBM or MCO report to the Health and Human Services Commission (HHSC) every 90 days the number of challenges that were denied in that period for each MAC list drug for which a challenge was denied.

The PBM or MCO would be required to notify HHSC within 21 days of beginning to use a MAC list for drugs dispensed at retail but not by mail.

SB 1106 would require that the PBM or MCO provide a process for each of its network pharmacy providers to readily access the MAC list specific to that provider. The MAC list would otherwise remain confidential.

HHSC would be required to seek to amend contracts entered into before the bill's effective date, but in the case of a conflict between a provision in the bill and a contract with an MCO, the contract would prevail.

SB 1106 would take effect September 1, 2013, except for the requirement that that the PBM or MCO establish a process to access their MAC lists, which would take effect March 1, 2014.

SUPPORTERS SAY:

SB 1106 would provide transparency in the manner in which prescription drug prices are set in the Medicaid managed care system. Currently, neither HHSC nor pharmacies can determine which drugs will be reimbursed using a MAC formula, what the price will be, when it will change, or what sources are used to determine MAC prices.

Transparency in the way MAC prices are determined would establish PBM and MCO accountability by ensuring MAC prices were related to the wholesale market and not arbitrarily determined. This would provide pharmacies with much needed pricing certainty and predictability.

The bill would protect the Medicaid managed care program. By identifying the difference between the rate at which HHSC reimburses MCOs for prescription drugs and the rate at which PBMs reimburse pharmacies, the bill would give HHSC a mechanism to validate that the state was saving the maximum amount of money on prescription drugs. It also would prevent payments to pharmacies for Medicaid patients from dropping so low as to drive pharmacies out of the Medicaid managed care program, reducing patient access to medication.

Despite the indeterminate fiscal note, there is little risk that the bill would increase costs to the Medicaid program. Currently, MAC lists allow PBMs to capture a disproportionate amount of profit by underpricing certain prescription drugs. Allowing the free market to more accurately determine their costs would mean PBM profit margins also more accurately would reflect the free market, not that any price changes would be passed on to Medicaid as the payor.

OPPONENTS SAY:

SB 1106 would risk imposing significant fiscal costs on the state. If, contrary to HHSC's expectations, the bill caused an increase in the amounts MCOs were required to reimburse pharmacy providers under Medicaid managed care, those higher amounts would result in increases to the capitation rates paid to the MCOs, the costs ultimately would borne by

taxpayers.

For example, according to the Legislative Budget Board, estimated capitation payments in fiscal 2014 total $2.4 billion in all funds. Each 1 percent increase in capitation payments would increase all-funds expenditures by $24 million, including $10 million in general revenue.

SB 1106 would be an unnecessary governmental intrusion on business. PBMs are efficiently administering the Medicaid managed care program's pharmacy benefit plans and passing savings on to taxpayers. This bill would risk disrupting a system that is working.

NOTES:

According to the fiscal note, depending on changes to reimbursement rates, the cost implications of the bill would range from insignificant to a significantly negative impact on general revenue funds.

The House companion, HB 1137 by J. Davis, was left pending in the Public Health Committee following a public hearing on April 17.

SUBJECT: Fees for non-covered optometric services in insurance contracts

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Smithee, Eiland, G. Bonnen, Morrison, Muñoz, C. Turner

1 nay — Taylor

2 absent — Creighton, Sheets

SENATE VOTE: On final passage, April 10 — 30-1 (Campbell)

WITNESSES: (*On House companion bill, HB 1280:*)
For — Tommy Lucas, Texas Optometric Association; (*Registered, but did not testify:* B.J. Avery, David Frazee, Kevin Gee, Justin Henderson, Carl Isett, John McCormick, and Aaron Wolf, Texas Optometric Association; Steve Nguyen; Tyler Rudd, Texas Academy of Pediatric Dentistry)

Against — Kandice Sanaie, Texas Association of Business; (*Registered, but did not testify:* Lucinda Saxon, National Association of Specialty Health Organizations; A.R. Schwartz, Texas Retail Optical Companies)

On — Jennifer Cawley, Texas Association of Life and Health Insurers; Debra Diaz-Lara, Texas Department of Insurance; David Gonzales, Texas Association of Health Plans

BACKGROUND: SB 554 by Carona et. al, enacted by the 82nd Legislature, prohibits contracts between health plans and dentists from limiting the fee a dentist can charge for dental services that are not covered by the health plan.

DIGEST: SB 632 would prohibit a contract between an insurer and an optometrist or therapeutic optometrist from limiting or discounting the fee the optometrist or therapeutic optometrist could charge for product or service not covered by a health plan.

The bill would define a "covered product or service" as a vision care product or service that could be reimbursed under an insurance enrollee's managed-care plan contract or which could be reimbursed subject to a

contractual limitation, including a deductible, a copayment, coinsurance, a waiting period, an annual or lifetime maximum limit, a frequency limitation, or an alternative benefit payment.

The bill would take effect September 1, 2013, and would apply only to a contract entered into or renewed on or after January 1, 2014.

SUPPORTERS SAY:

SB 632 would stop health plans from requiring optometrists, as a condition of signing plan contracts, to also agree to discounted fees for non-covered services to the plan's enrollees. Current law makes it difficult for individual optometrists to negotiate with insurance companies over the size of a discount for optional, non-covered services, such as a third pair of glasses or treated lenses, if they want to accept patients with insurance. A government solution is needed because antitrust restrictions also prevent health-care providers from banding together. In areas of the state where a large employer dominates, an optometrist has no choice but to sign a contract to serve patients. Once small negotiated discounts ranging from 5 percent to 10 percent are now much higher, forcing optometrists to offer products and services almost at cost with very little profit.

The bill would not increase health-care costs. Optometrists already offer their own discounts on services and products not covered by insurance plans and for those without insurance. The bill could lower health-care costs overall by allowing optometrists to offer their own discounts and set lower fees for both insured and uninsured patients as needed, which also would increase patient choice between optometrists.

The trend in fee discounts on non-covered services unfairly requires optometrists to cut their rates so that insurers can offer a more comprehensive benefit at a low cost. If insurers or employers want to offer these non-covered services, they should do so within the plan's benefits as covered services. This practice not only is unfair to optometrists, but also to consumers because it often requires optometrists to cost-shift their lost revenue onto their other patients, many of whom do not have vision insurance.

The bill would not affect services and products covered by an insurance plan, only those specifically not covered by insurance.

OPPONENTS SAY:

SB 632 would negatively impact the quality of the health insurance that employers could offer their employees and would raise health-care costs.

Insurance plans negotiate discounts and lower fees for non-covered services as an added benefit for plan members. The bill could cause insurers to add non-preventive services to a plan, which would increase premiums.

Alternately, SB 632 would raise costs for consumers by requiring them to pay the provider's full billed charges for non-covered services and products rather than a negotiated discount rate. Removing the ability of an insurance company to negotiate discounts with providers for non-covered services would put insured consumers at a disadvantage with regard to consumers without insurance, who may be given a discount because they are uninsured.

OTHER OPPONENTS SAY:

The state should set a cap on the size of a discount an insurance company could negotiate with an optometrist or therapeutic optometrist, rather than prohibiting negotiation altogether.

NOTES:

The companion bill, HB 1280 by Lozano, was reported favorably as substituted by the House Insurance Committee on April 16.

SUBJECT: State audit of the Texas Enterprise Fund

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 8 ayes — J. Davis, Vo, Bell, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Y. Davis

SENATE VOTE: On final passage, April 16 — 26-3 (Hancock, Nichols, Schwertner)

WITNESSES: None

BACKGROUND: Government Code, sec. 481.078 outlines provisions for the Texas Enterprise Fund, which provides grants for economic, infrastructure, community development, job training programs, and business incentives. The governor administers the fund on behalf of the state and must have the approval of the lieutenant governor and the speaker of the House before awarding grants.

DIGEST: CSSB 1390 would require that the state auditor conduct an audit of the Texas Enterprise Fund.

The state auditor would have discretion as to the scope and objectives of the audit, consistent with generally accepted government auditing standards. The audit could address whether money from the Enterprise Fund was:

- disbursed in compliance with the Government Code and other relevant laws;
- monitored to determine whether those awarded money complied with terms of applicable agreements; and
- maintained in a manner providing adequate accountability to ensure the proper use of disbursed money.

The state auditor, to the extent practicable, also could assess the efficiency and effectiveness of the Enterprise Fund.

Not later than January 1, 2015, the state auditor would have to file an audit report with the lieutenant governor, the speaker of the House of Representatives, and committee chairs within the Senate and the House with jurisdiction over fiscal matters. The report could include information such as details on the grant approval process, grant recipients, and a synopsis of grant agreements amended for reasons related to the original job creation goals.

The bill would take effect September 1, 2013, and would expire September 1, 2015.

SUPPORTERS SAY:

CSSB 1390 would require the state auditor to audit the Enterprise Fund, which has not been subjected to an external audit since its inception a decade ago. Transparency regarding the Enterprise Fund is important and would ensure that the fund was in keeping with the provisions that created it — namely, to provide grants to boost Texas' economy and workforce.

OPPONENTS SAY:

The extent of the bill's usefulness would hinge on the scope of the audit, which would be left to the discretion of the state auditor. Any proper audit of the Enterprise Fund should look into specific areas, such as whether fund recipients had made good on their promises of creating a specific number of jobs.

NOTES:

CSSB 1390 differs from the Senate-engrossed version in that the committee substitute would make the provisions related to the audit and the audit report voluntary. The substitute also would grant the state auditor discretion as to the scope and objectives of the audit.

According to the Legislative Budget Board, the bill would result in a negative impact to general revenue of $537,688 in the fiscal 2014 due to the cost of performing the audit.

SUBJECT: Modifying notification and service plan rules for annexation

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — Coleman, Farias, M. González, Hernandez Luna, Kolkhorst, Krause, Simpson

0 nays

2 absent — Hunter, Stickland

SENATE VOTE: On final passage, April 25 — 30-0 on the Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 2170:*)
For — Ken Bailey, Travis County Fire Rescue; Bob Nicks, Austin Firefighters Association; (*Registered, but did not testify:* Chad Allen, Richard Anguiano, Daniel Hendrix, Derek Mikes, Russell Pugh, and Alec Tull, Local 4583; Elizabeth Cargile, State Association of Fire and Emergency Districts; Danny Hobby, Travis County; James Jones, City of San Antonio; Randy Moreno, Austin Firefighters Association)

Against — None

BACKGROUND: Emergency services districts are governed by Health and Safety Code, ch. 775 and provide emergency medical and ambulance services, emergency rural fire prevention and control services, or other emergency services authorized by the Legislature.

Local Government Code, ch. 43, subch. B governs a municipality's general authority to annex land. Under sec. 43.056, a municipality that provides the following services — police and fire protection, emergency medical services, waste collection, water and wastewater, road and streets, lighting, parks and recreation — must provide them in the area proposed for annexation on the effective date of the annexation.

Otherwise, sec. 43.056 requires a municipality proposing the annexation to complete a service plan that provides for the extension of full municipal services to the area to be annexed by any of the methods by which it

extends the services to any other areas. The service plan must include a program under which the municipality will provide full municipal services in the annexed area within 2.5 years after the effective date of the annexation, unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing them. If the municipality proposes a schedule to extend this period, the schedule must provide for the provision of full municipal services within 4.5 years of the annexation.

DIGEST:

SB 1596 would require a municipality to provide written notice to an emergency services district board if it intended to annex an area that was part of an emergency services district and become the sole provider of emergency services to that area. If a municipality removed territory from an emergency services district it had annexed, it would be required to compensate the district for the area.

A municipality that annexed territory from an emergency services district would be prohibited from having a service plan that reduced by more than a negligible amount the level of fire and police protection and emergency medical services that were provided within the area before annexation. The plan could not cause a reduction in such services for the annexed area that would be below services offered to other areas within the municipality with similar topography, land use and population density.

The bill would require a municipality's fire department in a county with a population of more than 1 million and less than 1.5 million (Travis County) to provide an initial response to the annexed territory to the same degree it provided service to similar areas of the municipality. It also would prohibit the municipality from providing fire services to the annexed area solely or primarily through an automatic aid or mutual aid agreement with the area's emergency services district or another provider. The bill would allow the emergency services district to provide supplemental fire and emergency medical services to the annexed area through an automatic aid or mutual aid agreement.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

SB 1596 would ensure that residents in a community served by an emergency services district that was annexed by a city would retain an adequate level of emergency fire, medical, and ambulance services. It also would prevent a city from imposing a higher property tax rate on a newly

annexed area without providing the municipal services required by law.

SB 1596 would apply to the City of Austin and Travis County. The bill stipulates that an area that was annexed by a city would enjoy a comparable level of services that were offered to other city residents. This would prompt a city to carefully consider whether it could provide these vital services before it annexed land and would reduce the number of annexations after which property owners unfairly paid a higher tax rate for fewer services. Current law does not prevent a city from annexing an area, stripping the tax value away from an emergency services district, then entering into a mutual-aid agreement with the same district so that it provides service to the area with fewer resources. SB 1596 would prevent these conditions that could place residents at risk.

It also would require that a city notify an emergency services district if it intended to annex an area it served and compensate the district if territory was removed by the city. Currently, cities can annex portions of emergency service districts without notifying the district or determining a plan for services rendered by an emergency services district in an annexed area.

The bill would not prevent the City of Austin from entering into an automatic aid agreement with an emergency services district. It simply would ensure that the agreement could not be used in place of full city services. Additionally, it would give the City of Austin and an emergency services district discretion to define a level of emergency services for residents of an annexed area.

OPPONENTS SAY:

SB 1596 would write onerous requirements into law that could poison the state's annexation process.

Requiring a city to provide full emergency services to an area following an annexation would be too costly and could chill further annexations. Moreover, the bill would not afford the city the flexibility of entering into an agreement with an emergency services district or another entity to provide the best fire service for an annexed area.

Government is best when it is nimble. In this case, SB 1596 would prohibit Austin's city government from selecting as first responders an emergency services district or other entity that was best suited for these outlying areas. Meeting the bill's mandate could force the City of Austin

to abruptly build fire and ambulance stations in outlying areas rather than allowing commercial and residential development to progress and the revenues from those properties to pay for infrastructure costs.

NOTES:

The companion bill, HB 2170 by E. Rodriguez, died in the Local and Consent Calendars Committee after the County Affairs Committee recommended a committee substitute following a public hearing on April 11.

SUBJECT: Requiring trauma-informed care training for certain juvenile justice staff

COMMITTEE: Corrections — favorable, without amendment

VOTE: 4 ayes — Parker, White, Riddle, J.D. Sheffield

0 nays

3 absent — Allen, Rose, Toth

SENATE VOTE: On final passage, April 18 — 29-1 (Nichols)

WITNESSES: No public hearing

DIGEST: SB 1356 would require the board of the Texas Juvenile Justice Department (TJJD) to require trauma-informed care training for probation officers, juvenile supervision officers, and court-supervised community-based program personnel. The TJJD would have to provide the training during the pre-service training conducted for juvenile probation officers, juvenile supervision officers, juvenile correctional officers, and juvenile parole officers.

The bill would add training on trauma-informed care and the signs and symptoms of human trafficking to the instruction that must be given during the 300-plus hours of training required for juvenile corrections officers.

The training would have to provide knowledge of how to interact with juveniles who have experienced traumatic events.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: SB 1356 would improve the handling of youths in the juvenile justice system who had experienced trauma. By one estimate, roughly half the youths in juvenile detention facilities have experienced trauma, such as emotional, physical, or sexual abuse; witnessing violence or gang violence; humiliation; and deprivation.

Youths who experience trauma can respond to certain actions or triggers in ways that untrained staff can mistake for disobedience. These youths are sometimes disciplined for their responses with the use of restraints, seclusion, or in other inappropriate ways. This can result in more trauma for the youth and is unproductive in helping the youths rehabilitate. By providing staff with the tools to interact appropriately with youths who had experienced trauma, the bill could prevent them from returning to the juvenile or adult criminal justice systems.

While some TJJD and local juvenile justice staff may receive training in trauma-informed care, it is infrequent and not universally provided. SB 1356 would address this gap in training by requiring all local juvenile justice staff dealing with youths and all juvenile corrections offices to get information about trauma-informed care. SB 1356 also would require training in the signs and symptoms of human trafficking so that juvenile justice staff were able to recognize and help youths who had experienced trafficking.

SB 1356 would not burden the TJJD or local juvenile probation departments, which could meet the requirements of the bill within their existing resources. According to the fiscal note, the bill would have no significant fiscal impact to the state. TJJD already has some information on these issues available in a mental health education module it has developed. This could be adapted for the training required by the bill. Local departments would receive the training from TJJD and only would have to implement the training as it best fit their operations. TJJD easily could work the trauma-informed care training and information about human trafficking into its 300 hours of juvenile corrections officer training.

OPPONENTS SAY:

It could be difficult for the TJJD and local probation departments to meet the requirements of SB 1356 without additional resources. TJJD, created in 2011, is merging the work of the two previous agencies that handled juvenile offenders. The proposed fiscal 2014-15 budget would reduce appropriations for the agency, making it challenging to take on additional, unfunded tasks. Local departments also have many demands on their resources and could encounter costs in implementing the bill.